

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 1161.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 19, 2010.

[R11-52]

PREAMBLE

1. Sections Affected

R12-4-406
R12-4-514
R12-4-518
Article 11
R12-1-1101
R12-4-1102

Rulemaking Action

Amend
Amend
Amend
New Article
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-255.01, 17-255.02, and 17-255.03

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1160, June 10, 2011 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Tom McMahon, Invasive Species Coordinator

Address: Game and Fish Department, WMHB
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7271

Fax: (623) 236-7366

E-mail: tmcMahon@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Laws 2009, 3rd Special Session, Ch. 7, § 28(B)(1), which allows an agency to pursue rulemaking for an authorization or requirement enacted by the legislature after January 1, 2009. Laws 2009, 1st Regular Session, Ch. 77 became effective September 30, 2009. This legislation allows the Department to establish orders, enforce laws and rules designed to prevent the spread of aquatic invasive species.

The Aquatic Invasive Species legislation was supported during legislative hearings by a broad array of stakeholders including the Salt River Project, Central Arizona Project, Arizona Municipal Water Users Association, and Roosevelt Water Conservation District.

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Quagga and zebra mussels accumulate on underwater surfaces and have the ability to impair water delivery structures and systems. These mussels reproduce rapidly; resulting in large populations in affected water bodies, resulting in a negative ecological and environmental impact to Arizona waterways and water delivery systems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment that have adult mussels attached and the movement of water itself in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. It is believed that the initial movement of these mussels to the Colorado River was as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland.

On March 1, 2011, in accordance with A.R.S. § 17-255.01(B)(1), the Arizona Game and Fish Department's Director amended Orders listing quagga and zebra mussels as aquatic invasive species, listing locations where these mussels are present, documented, or suspected, and establishing conditions for movement of watercraft, vehicles, conveyances, or other equipment from listed waters.

The proposed rules will provide definitions for terms related to aquatic invasive species and establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

R12-4-1101 is a new rule, providing definitions for terms used within Article 11.

R12-4-1102 is a new rule, establishing prohibitions designed to prevent the movement aquatic invasive species, protocols to be followed before a person may leave waters where aquatic invasive species are present, inspection requirements, exemptions to the rule, and states where Director's Orders can be obtained.

R12-4-406 is amended to reference R12-4-1102.

R12-4-514 is amended to require watercraft livery owners to comply with the requirements established under Article 11.

R12-5-518 is amended to require regatta sponsors and participants to comply with the requirements established under Article 11.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The rules will benefit private consumers and public and private entities by addressing a current threat to public health and safety.

The Department anticipates that the proposed rulemaking will not impose additional costs on private consumers, public or private employment, or any political subdivisions in this state.

The Department anticipates increased costs associated with implementing the proposed rules due to increased training of enforcement officers.

The Commission has determined that the benefits of the rulemaking outweigh any costs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

See item 4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rulemaking:

Date: October 14, 2011

Time: 8:00 a.m.

Location: 5000 W. Carefree Highway
Phoenix, AZ 85086

Nature: Oral Proceeding

Close of record: October 14, 2011 5:00 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

Section

R12-4-406. Restricted Live Wildlife

ARTICLE 5. BOATING AND WATER SPORTS

Section

R12-5-514. Liveries

R12-4-518. Regattas

ARTICLE 11. AQUATIC INVASIVE SPECIES

Section

R12-4-1101. Definitions

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

ARTICLE 4. LIVE WILDLIFE

R12-4-406. Restricted Live Wildlife

A. No change

B. ~~With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, an~~ In addition to any applicable federal license or permit, an individual shall possess an appropriate special license listed ~~in~~ under R12-4-409(A) ~~or R12-4-430,~~ or act under a lawful exemption from the requirements of this Article in order to ~~use~~ possess wildlife listed ~~in~~ under this Section for any activity prohibited ~~by~~ under A.R.S. § 17-306, ~~or~~ or R12-4-402, ~~or R12-4-1102.~~ Exemptions from these requirements are listed ~~in~~ under R12-4-316, R12-4-404, R12-4-405, R12-4-407, R12-4-425, and R12-4-427.

C. No change

D. No change

E. No change

F. No change

G. No change

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ARTICLE 5. BOATING AND WATER SPORTS

R12-4-514. Liveries

- A. Under A.R.S. § 5-371, a watercraft owned by a boat livery that requires registration and does not have the certificate of number on board shall be identified while in use by means of a receipt provided by the livery to, and to be kept in the possession of, the person operating the rented watercraft. The receipt shall contain the following information:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- B. A livery shall comply with the aquatic invasive species requirements established under A.R.S. Title 17, Chapter 2, Article 3.2 and Article 11.

R12-4-518. Regattas

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- B. No change
- C. No change
- D. The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S. Title 17, Chapter 2, Article 3.2 and 12 A.A.C. 4, Article 11.

ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-1101. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means an individual who operates or is in actual physical control of the watercraft, vehicle, conveyance, or equipment.

“Owner” means any association, business, individual, corporation, firm, or partnership that claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” means an owner, operator, or transporter of a watercraft, vehicle, conveyance, or equipment.

“Release” means to place, plant, or cause to be placed or planted in waters.

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“Transporter” means any individual, firm, corporation, partnership, or association responsible for the overland movement of watercraft, vehicles, conveyances, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

- A.** A person shall not, unless authorized by the Commission under Article 4:
1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
 2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
 3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
- B.** Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and before leaving that location, a person shall:
1. Remove all clinging materials such as plants, animals, and mud.
 2. Remove any plug or other barrier that prevents water drainage or, when none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C.** Before transporting watercraft, vehicles, conveyances, or equipment to any waters located within or bordering this state from waters where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D.** Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect watercraft, vehicles, conveyances, and equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E.** If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the protocols described in Director’s Order 3.
- F.** Director’s Order 1 - Aquatic Invasive Species List, Director’s Order 2 – Designation of Waters or Locations Where Aquatic Invasive Species are Present, and Director’s Order 3 – Mandatory Conditions on Movement from Listed Waters are available at any Department office and online at azgfd.gov.
- G.** This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.